IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1102 of 2000

with

SPECIAL CIVIL APPLICATION No 146 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN FARMERS FERTILIZERS CO-OPERATIVE LIMITED

Versus

KAMLESHBHAI JETHABHAI MAKWANA

Appearance:

1. Special Civil Application No. 1102 of 2000
   MR KM PATEL for the Petitioner.
   MR CB DASTOOR for the Respondent.
2. Special Civil Application No. 146 of 2001
   MR CB Dastoor for the Petitioner.
   MR KM PATEL for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/07/2004

ORAL JUDGEMENT

By filing Special Civil Application No.1102 of 2000, the petitioner has challenged the Award passed by the Presiding Officer, Labour Court, Kalol, on 29.11.1999 in Reference (LCK) No.204 of 1991, by which the Labour Court has allowed the aforesaid Reference by ordering reinstatement of the respondent-workman to his original post, with a further direction that he should be treated as in continuous service with effect from 1.4.1991. The Labour Court has not given any monetary benefit for the intervening period. This Court, while admitting the matter, has stayed the aforesaid order of reinstatement subject to complying with the provisions of Section 17-B of the Industrial Disputes Act.

The respondent-workman has raised the aforesaid dispute on the ground that, initially, he was appointed on a daily rated basis in the year 1986 and between June and November, 1986, he has served for about 90 days. The case of the respondent-workman was that, initially, he had undertaken the apprenticeship with the petitioner-Society with effect from 20th September, 1984. Therafter, by another order dated 20th September, 1985, the apprenticeship period was extended for six months. The respondent therafter was assigned the work of a casual draftsman on daily rated basis. Accordingly, he worked on the aforesaid post of a casual draftsman on a daily rated basis from April, 1986 to November, 1986, which comes to about 103 days. Subsequently, the respondent-workman applied for getting employment in the petitioner-Society as the Society had started a new Project, viz., IFFCO Aonla Project at Bareilly (U.P.). The respondent, on the basis of his application, was appointed as Assistant Draftsman by an order dated 7.11.1986 for a period of six months on a consolidated salary, with an express stipulation that his services will come to an end automatically after the expiry of such period, i.e. six months. It is not in dispute that the respondent herein accepted such appointment. Accordingly, he was appointed at the aforesaid Project. However, on expiry of six months, he was relieved from the said post. Accordingly, from 23rd May, 1987,the respondent was relived from the services of Iffco, Aonla Project.

The respondent thereafter filed a writ petition before the High Court, being Special Civil Application No.6550 of 1987, challenging the said action of the petitioner-Society, terminating his services. Initially,

a Division Bench of this Court had rejected the said petition by its order dated 17.1.1991. However, the respondent herein filed a review petition on the ground that the matter was decided ex parte as the concerned Advocate was not present when the matter was called out. The Court allowed the said review petition.

Thereafter, the petitioner was again heard and the Division Bench of this Court, while disposing of the aforesaid Special Civil Application, observed as under :-

" ... ...

xxx xxx xxx

The impugned order annexure-E shows that the appointment of the petitioner was for limited period. In our opinion, if the petitioner so chooses, he may raise industrial dispute and avail of alternative remedy under the appropriate Labour legislation.

xxx xxx xxx

... ..."

The petitioner thereafter raised the aforesaid Industrial Dispute in which the Labour Court passed an order of reinstatement, with continuity of service, but without any back wages. It is the aforesaid order of the Labour Court which is impugned at the instance of the petitioner herein.

It has been pointed out by the learned Advocates for both the sides that the respondent-workman was, subsequently, appointed as a Craft Instructor with ITI, Sunav, with effect from 3.2.1990, and, accordingly, he has already got a gainful employment from the aforesaid date.

Mr.K.M. Patel, learned Advocate for the petitioner, vehemently submitted that the order of the Labour Court is contrary to law and the evidence on record, as, according to him, since the appointment in the Aonla Project was a tenure appointment, moment the period was over, he was relieved from service and according to him, therefore, there was no violation of the provisions of the Industrial Disputes Act, and his earlier services could not have been taken into consideration while clubbing the services which he has

put in at Aonla Project.

There is, however, a consensus prevailing between both the sides and, Mr.Patel, learned Advocate for the petitioner, submitted the petitioner-Society is willing to give an ex gratia payment of Rs.40,000/- in all in lieu of the order of reinstatement, and that too, only by way of the special facts and circumstances of the case without being treated as a precedent in other cases.

Mr.Dastoor, learned Advocate for the respondent, after taking instructions from his client, submitted that the respondent has no objection in taking the aforesaid amount in lieu of reinstatement which is passed by the Labour Court. He, however, submitted that his client, i.e. the respondent, would like to make a representation to the petitioner-Society for considering his case for granting fresh appointment, if any vacant post is available. He submitted that, however, his client would like to make the representation not as a matter of right for getting employment, but for considering his case sympathetically.

In view of the consensus prevailing between both the sides, the order passed by the Labour Court is quashed and set aside and the statement of the petitioner-Society, that the ex gratia payment of Rs.40,000/- will be made available in favour of the present respondent within a period of two months from today, is recorded. The respondent-workman can accept the aforesaid amount. It is clarified that the respondent will have no claim for getting the reinstatement order on the basis of the Labour Court's order, since that order is set aside, and the statement of the Society is also recorded that Rs.40,000/- will be paid to the respondent workman as ex gratia. However, if the petitioner passes any order in the representation that may be submitted by the respondent, though not as a matter of right, but on sympathetical ground, then, naturally, whatever amount which is received by the respondent, i.e. Rs.40,000/-, will have to be repaid to the petitioner-Society. It is, however, clarified that if the representation for getting fresh appointment is rejected by the petitioner-Society, it may not give any fresh cause of action to the respondent to file any petition and Mr.Dastoor, learned Advocate for the respondent, submitted that the respondent is agreeable to accept the decision to be rendered by the petitioner on the representation of the respondent and such decision will be binding to him.

Special Civil Application No.1102 of 2000 is accordingly disposed of on the basis of the consensus prevailing between the parties. The petition is accordingly allowed to the extent, as indicated above. Rule is made absolute accordingly, with no order as to costs.

Before parting with this order, it is clarified that so far as the present petition is concerned, it is in connection with the challenge to the Labour Court's order. So far as the request of Mr.Dastoor regarding making representation for getting fresh appointment si concerned, this Court is not required to express any opinion and it is for the authority to decide such representation as deemed fit by it.

In view of the above order passed in Special Civil Application No.1102 of 2000, Special Civil Application No.146 of 2001 no longer survives. It is accordingly disposed of in view of the above order passed in Special Civil Application No.1102 of 2000. Notice is discharged.

29th July, 2004 (P.B. Majmudar, J.)

***

(apj)